

# EXHIBIT D

**FILED: ERIE COUNTY CLERK 08/17/2021 03:46 PM**

INDEX NO. 804540/2021

NYSCEF DOC. NO. 27

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**SUPREME COURT CHAMBERS  
STATE OF NEW YORK**

Donna M. Siwek  
*Supreme Court Justice*

25 Delaware Avenue  
4th Floor, Part 26  
Buffalo, NY 14202

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August 16, 2021

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Re: Cynthia Bull, Administrator of the Estate of Robert H. Ingalsbe, V, Deceased v. County of Erie, Erie County Sheriff's Office, Town of Grand Island and Town of Grand Island Police Department  
Index No. 804540/2021

**DECISION**

Dear Counselors:

After reviewing the papers submitted to the Court on August 12, 2021 and the relevant statutes and case law, please be advised that the Court grants Defendant Erie County Sheriff's Office's motion for dismissal for failure to state a cause of action pursuant to CPLR §3211(a)(7).

We concur with the Defendant Erie County Sheriff's Office that it is not a separate legal entity capable of being sued in its own name. (See, *Wierzbic v. County of Erie, et al*, 2019 WL 550521 (W.D.N.Y. 2019) and *Santamiagro v. County of Orange, et al*, 226 A.D.2d 359 (2d Dept 1996). We concur with the Defendant Sheriff's Office that Plaintiff's request to defer a ruling on this motion so as to allow Plaintiff an opportunity to discover the identity of yet unnamed sheriff's deputies who participated in the decedent's arrest would be inappropriate as those yet to

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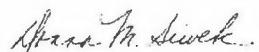
Decision

August 16, 2021

be named defendants/deputies are not united in interest with the Defendant Erie County Sheriff's Office. *See, Johanson v County of Erie, et al*, 134 A.D.3d 1530 (4<sup>th</sup> Dept 2015), and Plaintiff has failed to establish that she would be entitled to the benefit of the relation-back doctrine. *See, Jones v Seneca County and Deputy Eldredge*, 154 A.D.3d 1349 (4<sup>th</sup> Dept. 2017).

Based on the foregoing the Defendant Erie County Sheriff's Office motion for dismissal for failure to state a cause of action pursuant to CPLR §3211(a)(7) is granted.

Counsel are directed to agree on the form and content of an order and upload the agreed upon order to NYSCEF.



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DONNA M. SIWEK  
New York State Supreme Court Justice

Dated: August 16, 2021